

LICENSEE

Balancing effective public safety, excellent customer service and a reliable source of revenue.

Spring 2005 Volume 11, Number 1 www.abc.virginia.gov

New Drinking Bills Send a Strong Message to

"I have signed this bill (HB 2255), which makes consumption of alcohol by anyone under 21, and providing alcohol or assisting in providing alcohol to anyone under 21, in most instances, a Class 1 misdemeanor, punishable by up to a year in jail. Under current law, it is already a crime to sell alcohol to someone underage and for someone underage to possess alcohol."

Governor Mark Warner



Supported by Jeffery Levy from Virginia College Parents and Guy Smith from Diageo, Governor Mark Warner signs the new underage drinking bills.

During the past Virginia General Assembly session House Representative Robert Bell introduced House Bill 2255, which criminalizes underage consumption and punishes anyone who aids or assists in providing alcohol to an underage person with a Class 1 misdemeanor; this bill was approved this spring. The revised bill makes it clear that "consuming," not just possessing and purchasing, is also illegal for those under 21 years of age. It's worth noting that any licensee who in good faith promptly notifies an agent of the ABC Bureau of Law Enforcement of a violation or suspected violation of this section may be granted immunity from an administrative penalty for the violation.

The word "consume" was also added to the section of the code relating to the use of fraudulent identifications: "No person under the age of 21 years shall use or attempt to use any (i) altered, fictitious, facsimile or simulated license to operate a motor vehicle, (ii)

altered, fictitious, facsimile or simulated document, including, but not limited to a birth certificate or student identification card, or (iii) motor vehicle operator's license, birth certificate or student identification card of another person in order to establish a false identification or false age for himself to *consume*, purchase or attempt to *consume* or purchase an alcoholic beverage."

David Albo's House Bill 2791 was also passed, amending 4.1-306 of the Code of Virginia, allowing courts to suspend for up to one year the driver's license of someone who purchases alcohol for someone who is underage, intoxicated, or interdicted. The amendment did *not* change the section of the code that states the provider is guilty of a Class 1 misdemeanor.

Benefiting Virginia

In your role as business partners with ABC, you have supported our efforts to provide excellent customer service and a reliable source of revenue back to the state. ABC has contributed almost \$1 billion to the Commonwealth in the last five years. These funds have been distributed to the Department of Mental Health, Mental Retardation and Substance Abuse Services, Virginia's General Fund, and to localities for education, police, fire, rescue, public works and other projects.

Coming soon...the Licensee Resources page of the ABC Web site...stay tuned!

Enforcement Update



S. Christopher Curtis, Director of ABC Bureau of Law Enforcement

I wanted to take this opportunity to announce my retirement to the licensees across the Commonwealth. Although I am retiring from ABC, effective May 1, I will be continuing my work in the field of law enforcement through my new position with the Pacific Institute for Research and Evaluation (PIRE).

PIRE has received \$1.5 million from Congress to create a National Center for Alcohol Law Enforcement (NCALE). Once the NCALE is established, PIRE will seek additional funds to allow the center to fund programs that encourage local law enforcement agencies to place greater

emphasis on alcohol law enforcement.

As one of four regional directors, I will be working with law enforcement professionals throughout the Southeast on alcohol-related issues, including ABC special agents. I will be working with local law enforcement agencies by

As conscientious business people, it's up to you to run a business that is in compliance with state laws.

helping them find training, expertise and resources they need to enforce alcohol laws. While ABC recruits for my replacement, an acting bureau director will assume my responsibilities so service to you and other citizens will not be affected.

I was privileged to spend 30 years working for an agency bestowed with such an important responsibility,

ensuring the public safety of Virginia's citizens. Although I will miss working on a daily basis with my ABC colleagues, I couldn't pass up this opportunity to work for the NCALE during the exciting stages of its development and growth. I look forward to my new endeavor and continuing work with alcohol-related enforcement.

Through my decades in enforcement with ABC, I have come in contact with many great individuals in the alcohol beverage business. As licensees, you serve an important role within your communities. As conscientious business people, it's up to you to run a business that is in compliance with state laws. You have done a great job to help ensure the safety of your patrons, neighbors and other citizens through responsible business practices. I wish you luck and keep up the good work!

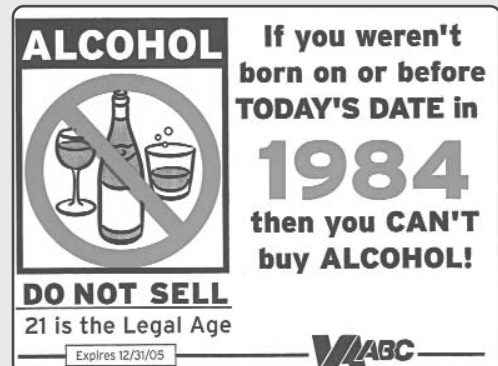
Do Not Sell Stickers Are Still Available

The "Do Not Sell" stickers for 2005 are available if you need additional sheets or did not receive your set this year. Stickers were mailed to all licensees in December for arrival by January 1, 2005. ABC offers stickers in English and Spanish for alcohol and tobacco sales, and they are also available in two different sizes to accommodate small and large surface spaces.

The stickers are easy to read tools that aid sellers when checking IDs. This year's *Do Not Sell* stickers have been coated with a smear-resistant varnish because some of you told us that while cleaning your counters, last year's stickers were affected by the cleaning solution spray. This UV coating should also prevent fading.

Similar to the 2004 stickers, this year's stickers were created using two different colors, one color for alcohol and one for tobacco. The vibrant colors were selected to ensure the dates are clearly visible to both consumers and sellers. To deter underage buyers, ABC suggests placing the stickers where both the seller and buyer can see them, possibly on the countertop or bar where purchases are made.

Although it is not mandatory, it is extremely important that these stickers are displayed in *all* licensed establishments. Additional stickers, or stickers in Spanish, are available upon request by calling ABC's Public Affairs Division at (804) 213-4413 or e-mailing the request to pubrel@abc.virginia.gov. Please include the number of stickers needed, mailing address and which version – English, Spanish or both.



Hearings and Appeals- Alternate Ways to Settle Pending Administrative Charges

By: Chief Hearing Officer Robert O'Neal

If you are one of the 1,500 or so licensees per year receiving an administrative violation against your ABC license, you may have wondered what happens next in the hearings process. In some cases, you will be scheduled for an administrative hearing before an ABC hearing officer.

The Hearings and Appeals Division staff travel statewide to conduct hearings, working with customers in all regions of the state to resolve administrative violations and hear objections in contested application matters. A licensee always gets at least 10 days notice before an administrative hearing is held (as required by the Virginia Administrative Process Act, § 2.2-4000 et seq. of the Code of Virginia). Our team goal, however, is to give a licensee 20 days notice when possible. We also want to make sure licensees know of the several alternative resolution options to settle a matter before an administrative hearing is held.

Consent Settlement Offers

Once a licensee gets the Notice of Pending Charge from the Hearings and Appeals Division, the licensee will also be given either a hearing date or a **consent settlement offer**. The licensee will qualify for the first offense program if it's a first time offense as provided for under the *Virginia Administrative Code (3-VAC 5-70-210).

If a licensee has not had any substantiated ABC violations within the three years immediately preceding the date of the new violation, then the licensee may enter into a written waiver of a hearing and either accept the period of license suspension set forth in the consent settlement offer letter or pay the civil charge set forth in lieu of the suspension of the license. If the licensee accepts the consent settlement offer, then they must sign the offer letter, get it notarized, and indicate whether they wish to pay the civil penalty or have the license suspended for the time period indicated. The entire package is sent to

the Hearings and Appeals Division in Richmond for the ABC Board to review and sign.

The consent settlement offer is valid for 20 days after the date it is mailed to the licensee. The chief hearing officer or the Board may extend the validity period of the offer beyond 20 days for good cause. If you need help with a consent settlement offer, contact **Melissa New** at (804)213-4444.

See the table on *Page 7* for a sample of the first offense penalties allowed under the regulations.

Offers in Compromise

Licensees often ask if there is another method available to settle pending charges without a hearing when they **do not qualify for the first offense** consent settlement offer. Making an **offer in compromise** is a process authorized under 3 VAC 5-10-160 of the ABC regulations. Under the provisions of the regulations, once a licensee gets the notice of an administrative violation, they have the ability to submit an offer directly to the ABC Board to settle the matter.

The offer should be in writing to the Secretary of the ABC Board, W. Curtis Coleburn, and should include the licensee's suggested suspension or civil penalty to resolve the pending administrative charge(s). Submission of an offer in compromise constitutes an admission of the alleged violation and is a waiver of the right of a formal hearing, if accepted by the Board.

The purpose of this regulation is to allow the Board and licensees to share information when it is in the public interest to resolve the pending matter before a hearing. A good example would be when a licensee is selling a business and needs to resolve the pending ABC administrative charges before the closing of the sale, or when the licensee wants to admit guilt in a matter but does not qualify for a first offense penalty as outlined in the consent

settlement offer process. If you need more information about the offer in compromise process, please contact **Pam Henley** at (804)213-4451.

Other Options

Lastly, there may be other alternatives to resolving an administrative violation without going to a hearing. Some licensees who have gone out of business or are closing due to fire or casualty loss may voluntarily surrender the license (or surrender it as revoked) to the ABC agent assigned to their establishment.

The agent will ask the chief hearing officer to terminate the administrative proceedings against that licensee without prejudice to the ABC Board. If the request is granted, the licensee will not have to come to an ABC hearing, which would be canceled. However, if the licensee reactivates the surrendered license or reapplies for a new license, these pending charges may be re-instated by the ABC Board and be set for a hearing prior to a new license being issued (or after reactivation of the old license).

If you have any questions about ABC hearing and appeals issues, call Chief Hearing Officer Robert O'Neal at (804)213-4566 or Chief Clerk Robert Scott at (804)213-4447.
*To access the Virginia Administrative Code (VAC) or the Alcoholic Beverage Control Act in the Code of Virginia (COV), please go to <http://www.abc.state.va.us/enforce/vacodes.html>.

Licensee violations and penalties — February 2005 — March 2005

Compiled by Public Affairs

As a result of ABC Bureau of Law Enforcement investigations and the ABC hearings process, the following businesses received a minimum sanction of a 10 to 30-day suspension and/or at least a \$1,000 fine from February 2005 to March

2005. These sanctions are reported to raise the awareness of ABC licensed businesses. The intent is to inform licensees of the potential penalties for violating Virginia's ABC Laws and Regulations.

It is the hope that making licensees

aware of these major violations will serve as a deterrent. Most licensed establishments operate clean and safe businesses as encouraged by the Virginia ABC Board.

Licensee	Violation	Penalty
Acropolis/Secrets In The City/Richmond	Allowed & maintained noisy & disorderly; location violates peace & good order; cause exists residence	Revoked
Apple Market 3200/Lynchburg	Sold to underage person on two occasions	50 days suspended or 20 days suspended and \$4,000 fine
Carter's Speedy Mart/Ringgold	Sold to underage person	Accepted fine of \$5,000
Crosby's Underground/Galax	Sold to intoxicated person; allowed consumption on premises; allowed person to loiter on premises; allowed consumption of alcohol by employee on duty	Revoked
Diageo Guinness USA, Inc./Stamford	Licensee made gifts of alcohol; importer gave property (unauthorized service) to retailer	120 days suspended or \$8,000 fine
E.E. Wine, Inc./Gainesville	Sold to underage person	30 days suspended or 10 days suspended and \$3,000 fine
7 Eleven Store #32603-2515/Richmond	Sold to underage person	30 days suspended or 10 days suspended and \$3,000 fine
7 Eleven Store #2583-20412/HayMarket	Sold to underage Person	30 days suspended or 5 days suspended and \$5,000 fine
Estabrook Inn/Norfolk	Sold to underage person	30 days suspended or 10 days suspended and \$3,000 fine
Food Lion #557/Norfolk	Sold to underage person	Accepted 3 days suspended and a \$5,000 fine
The Grapevine Restaurant/Front Royal	Cannot demonstrate financial responsibility; attempted to defraud the Board, Dept. of Taxation, & Town of Front Royal; fails to qualify as a restaurant	Revoked/with 12 month rule
Green Hill Market/Chilhowie	Sold to underage person	30 days suspended or 10 days suspended and \$2,500 fine
Hague Market/Hague	Sold to underage person	90 days suspended or 60 days suspended and \$5,000 fine
Little Mart/Staunton	Sold to underage person	Accepted fine of \$3,500
Los Tres Amigos Mexican Restaurant/Rocky Mount	Sold to underage person; failed to have a designated manager present; permitted an employee under 18 to sell alcohol	25 days suspended and \$2,500 fine

Licensee violations and penalties (continued)

Licensee	Violation	Penalty
Pike Restaurant/Falls Church	Sold to underage person	Accepted 30 days suspension and \$8,000 fine
Ragazzi's/Roanoke	Sold to underage person	30 days suspended or 3 days suspended and \$4,000 fine
Roadrunner Quik Shop/Chester	Sold to underage person	30 days suspended or 10 days suspended and \$3,000 fine
San Miguel Restaurant/Falls Church	Licensee cannot demonstrate financial responsibility to meet requirements of the business	25 days suspended or \$1,000 fine and 18 months probation
Steves II Express/Chincoteague	Sold to underage person	25 days suspended or \$2,000 fine
Stop and Run, Inc./Shackleford	Sold to underage person	25 days suspended and \$2,000 fine
Styles Bi Rite/Midlothian	Sold to underage person	60 days suspended or 30 days suspended and \$5,000 fine
Super Mart/Roanoke	Sold to underage person	Accepted 20 days suspension and \$7,500 fine
Super Star Texaco II/Glen Allen	Sold to underage person	60 days suspended or 15 days suspended and \$5,000 fine
Tads Deli/Virginia Beach	Sold to underage person	25 days suspended or \$2,000 fine
Texas Roadhouse/Christiansburg	Sold to and allowed consumption of alcohol on premises by intoxicated person	Accepted \$4,500 fine
Twisted Fish/Virginia Beach	Sold to underage person	25 days suspended or \$2,000 fine
Valley Express/Pulaski	Bad check to Wholesaler or Board	Accepted \$500 fine and to surrender the wine & beer license
Veneziano Restaurant/Norfolk	Sold to underage person	25 days suspended and \$2,000 fine
Wal Mart Supercenter #3265/Yorktown	Sold to underage person	Accepted 3 days suspended and \$4,000 fine
West Stoke Convenience Store/Danville	Licensee illegally possessed, distributed, sold or used, or allowed an employee, agent or other person to illegally possess, distribute, sell or use marijuana or other controlled substances on premises	Revoked
Wide Open/Virginia Beach	Sold to underage person	Accepted \$3,000 fine
Wildcats/Richmond	Licensee is not legitimate owner; failed to keep complete, accurate records; does not qualify as a restaurant	25 days suspended or 15 days suspended and \$1,500 fine

www.abc.virginia.gov

ABC is in the process of changing its Web site address to www.abc.virginia.gov. Please update your records with the new address. The old address will still work for at least a year to facilitate the transition.

Register for May and June RSVP Training Classes

Spots are open in the May and June *Responsible Sellers/Servers: Virginia's Program (RSVP)* training classes. RSVP, which started in June 2004, is a continual program offered at least once a month in every region of Virginia. RSVP covers laws and administrative regulations that govern alcohol sales and consumption, detecting fake identifications, preventing intoxicated customers and managing confrontational situations.

Taught by ABC's special agents, the training is designed for bartenders, clerks, cashiers, waitstaff and other front-line employees. Visit the ABC Web site at www.abc.virginia.gov for more information and a current schedule of classes.



ABC Introduces Additional Education Materials in Spanish

In addition to two brochures currently translated into Spanish, ABC is proud to offer bookmarks and posters for the Hispanic population within the Commonwealth. The agency realizes the Hispanic population within the licensee community is growing and has produced these materials to better serve this vital group of customers. Licensees are invited to order these materials and distribute them to friends, family members or other citizens in their communities.

The bookmarks and posters urge those who decide to drink alcoholic beverages, to do so in a responsible manner for themselves as well as for their families. The pieces also remind parents and guardians to set a good example because their children may follow their lead. The *Zero Tolerance* for underage purchase, possession or consumption of alcohol is also stressed through these pieces. Finally, the materials stress the importance of not driving while under the influence of alcohol.

In addition to the new bookmarks and posters, ABC continues to offer the brochures translated into Spanish. **Just The Facts: Virginia's Alcohol Laws and Parental Responsibility** discusses parental responsibility and the law, laying down the law for teens and tips for hosting an alcohol-free party. This helpful resource also discusses the legal consequences of drinking underage and using false identification to purchase alcoholic beverages.

No I.D. No Sale. No Way: Responsible Selling Guidelines gives simple but effective steps for licensees to combat illegal consumption and sales of alcohol. Checking identifications, dealing with upset customers, and the consequences of selling to anyone under 21 are some of the topics covered in this brochure. All these materials can be ordered on the ABC Web site at <http://www.abc.state.va.us/education.html> or by calling the Education office at (804) 213-4688.

Front



Back



Hearing and Appeals continued from page 3

First Offense Penalties Allowed for Consent Settlement Offers from 3 VAC 5-70-210:

Charge	Suspension	Civil Penalty
Sale of beer, wine, or mixed beverages to a person at least 18 but under 21 years of age	25 days	\$2000
Allowing consumption of beer, wine, or mixed beverages by a person at least 18 but under 21 years of age	25 days	\$2000
Aiding and abetting the purchase of alcoholic beverages by a person at least 18 but under 21 years of age	10 days	\$1000
Keeping unauthorized alcoholic beverages on the premises upon which the appropriate taxes have not been paid	10 days	\$1000
Keeping unauthorized alcoholic beverages on the premises upon which the appropriate taxes have been paid	7 days	\$500
Allowing gambling on the premises, if the licensee, agent, or employee is a participant, but is not conducting the gambling event or operation	10 days	\$1000
Allowing gambling on the premises, if the licensee, agent, or employee is a neither participant nor conducting the gambling event or operation	7 days	\$500
Allowing an intoxicated person to loiter on the premises	7 days	\$500
Sale of alcohol to an intoxicated person	25 days	\$2000
Allowing consumption of alcohol by an intoxicated person	25 days	\$2000
After hours sale or consumption of alcoholic beverages	10 days	\$1000
No designated manager on the premises	7 days	\$500
Writing an invalid check to a wholesaler or the ABC Board	7 days	\$250
Failure to keep records	7 days	\$500
Failure to keep mixed beverage food ration required by statute (not applicable if ration falls below 30%)	10 days	\$1000
Inadequate illumination	7 days	\$500
ABC license not posted	7 days	\$500
Conducting an illegal happy hour	7 days	\$500
Sale of alcoholic beverages in an unauthorized place or manner	10 days	\$1000

Ask ABC: Questions from the Field

"Ask ABC" is intended to provide answers to common and not-so-common questions that affect ABC retail licensees and their employees. This serves as an easy-to-use supplement to all of the education materials already offered through ABC, but is not a legal document and does not supercede the Code of Virginia, Virginia Administrative Code or any other statute.

Have a retail license question for ABC?

To submit a question to Ask ABC, please e-mail your question to:

whitney.miller@abc.virginia.gov

Q: Can a licensee charge a corking fee and/or allow the public to bring in their personal legally acquired alcoholic beverages?

A: There is no specific regulation or statute that prohibits a corkage fee being charged. However, since the corkage fee is based on being allowed to bring alcoholic beverages into establishments and that practice is not allowed, the only corkage fee that could be applied is for wine purchased at that retail restaurant (COV 4.1324 (A) (7)).

Q: Besides a driver's license, what are some other acceptable forms of identification that can be used to purchase alcoholic beverages?

A: Armed forces ID card, passport or visa, special ID card issued by the Virginia Department of Motor Vehicles or any valid ID issued by a federal or state agency. However, all valid forms of ID must contain a photograph and signature of the ID holder along with height and date of birth. A student ID is not valid or accepted as proof of legal age. An ID with an expired date is also not acceptable (3 VAC 5-50-20).



Governor
Mark R. Warner

Governor Mark Warner is dedicated to seeing Virginia lead the nation in the new century and in the new economy.

Governor: Mark R. Warner
Secretary of Public Safety: John W. Marshall

ABC Board Members:

Vernon Danielsen, *Chairman*
Esther Vassar, *Board Member*
Warren Barry, *Board Member*

Newsletter Editorial Board:

Becky Gettings, *Public Affairs Director*
Whitney Miller, *Editor, Public Affairs*
Linda Wine, *Designer, Public Affairs*

Phone: (804) 213-4413, **Fax:** (804) 213-4415

Gary Bond, *Wholesale/Retail, Operations Analyst*

Chris Curtis, *Bureau of Law Enforcement, Director*

Sandra Hankins, *ABC Board, Executive Secretary*

Tom Lisk, *Virginia Hospitality and Travel Association, Legal Council*

Mike O'Connor, *Virginia Petroleum, Convenience and Grocery Association, President*

Robert O'Neal, *Hearings & Appeals, Director*

Shawn Walker, *Bureau of Law Enforcement, Deputy Director*

Visit ABC online at www.abc.virginia.gov



Virginia Department of
Alcoholic Beverage Control
2901 Hermitage Road
P.O. Box 27491
Richmond VA 23261-7491

PRESORTED
STANDARD MAIL
US POSTAGE
PAID
RICHMOND VA
PERMIT NO 248